

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

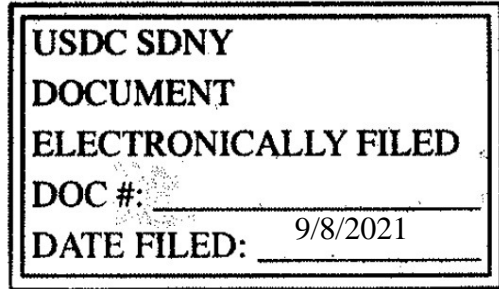
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RICHAR BAEZ,

Plaintiff,

-against-

RCO RESTORATION CORP. et al,

Defendants.
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20-cv-1066 (VSB) (JLC)

ORDER

VERNON S. BRODERICK, United States District Judge:

On December 17, 2020, I entered a default against Defendants RCO Restoration Corp. (“RCO”) and William Morocho (“Morocho,” and together with RCO, “Defendants”) on the issue of liability and referred the case to Magistrate Judge James L. Cott for an inquest on damages. (Doc. 43.) On May 10, 2021, Magistrate Judge Cott issued his Report and Recommendation (the “Report and Recommendation” or “R&R”) in which he recommended that Plaintiff be awarded a total of \$61,287.50 in damages. (Doc. 50.)

More than fourteen days has elapsed since Magistrate Judge Cott issued his R&R, and no party has filed an objection. Therefore, I treat Magistrate Judge Cott’s Report and Recommendation as unchallenged and, having reviewed it for clear error and found none, adopt it in full.

I. Factual and Procedural Background

The facts set forth in the Report and Recommendation are incorporated herein by reference unless otherwise noted. Familiarity with the facts is assumed and I recite here only those facts necessary for an understanding of the issues before me.

On February 7, 2020, Plaintiff initiated this action by filing his complaint against RCO, Morocho, and unnamed Defendant Darwin Doe (“Doe”), bringing claims under the Fair Labor Standards Act (“FLSA”) and New York Labor Law (“NYLL”). (Doc. 1.) On August 14, 2020, I dismissed Morocho and Doe from the case without prejudice because of Plaintiff’s failure to prosecute. (Doc. 15.) On August 31, 2020, I granted Plaintiff’s motion to reopen the case against Morocho and Doe. (Doc. 22.) Plaintiff filed affidavits of service as to all Defendants on September 27, 2020. (Docs. 29–31.) Defendants have failed to enter an appearance, request an extension, or answer or otherwise respond to the complaint.

On October 26, 2020, the Clerk of Court entered a Certificate of Default against all Defendants. (Doc. 36.) Plaintiff sought, and I issued, an Order to Show Cause on November 16, 2020, directing Defendants to show cause as to why an order should not be issued granting Plaintiff a default judgment. (Doc. 40.) Defendants were served with the Order to Show Cause materials on November 17, 2020. (Doc. 41.) The Order to Show Cause hearing was held on December 16, 2020, and Defendants did not appear at the hearing or request an adjournment of that hearing. On December 17, 2020, I entered default judgment as to liability against RCO and Morocho. (Doc. 43.) On December 28, 2020, I signed Plaintiff’s notice of voluntary dismissal against Doe, (Doc. 46), leaving RCO and Morocho as the only Defendants left in the case. I also referred the case to Judge Cott for an inquest on damages on December 28, 2020. (Doc. 47.)

On December 29, 2020, Judge Cott issued a scheduling order instructing Plaintiff to submit proposed findings of fact and conclusions of law concerning all damages and other monetary relief permitted under the entry of default of judgment. (Doc. 48.) On January 25, 2021, Plaintiff filed those proposed findings of fact and conclusions of law. (Doc. 49.)

Defendants did not file a response or otherwise respond. Judge Cott issued his R&R on May 10, 2021. (Doc. 50.)

II. Analysis

In reviewing a magistrate judge's report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Parties may raise specific, written objections to the report and recommendation within 14 days of being served with a copy of the report. *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). When a party submits a timely objection, a district court reviews *de novo* the parts of the report and recommendation to which the party objected. 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). When neither party submits an objection to a report and recommendation, or any portion thereof, a district court reviews the report and recommendation for clear error. *Santana v. Comm'r of Soc. Sec.*, No. 17-CV-2648 (VSB) (BCM), 2019 WL 2326214, at *1 (S.D.N.Y. May 30, 2019); *Marte v. Berryhill*, No. 17-CV-3567 (VSB) (JLC), 2018 WL 5255170, at *1 (S.D.N.Y. Oct. 22, 2018); *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

Here, Judge Cott's R&R stated, in all caps and bold font, that "[f]ailure to file objections within fourteen (14) days will result in a waiver of objections and will preclude appellate review." (Doc. 50, at 14.) No party has filed an objection or sought additional time to file an objection. I therefore reviewed Magistrate Judge Cott's thorough and well-reasoned Report and Recommendation for clear error and, after careful review, found none.

III. Conclusion

Accordingly, I ADOPT the Report and Recommendation in its entirety. Plaintiff is awarded a total of \$61,287.50 in damages. As Judge Cott correctly noted, “the amount of the judgment should automatically increase if the conditions set forth in [NYLL] § 198(4) are met.” (Doc. 50, at 13.)

The Clerk’s Office is respectfully directed to terminate any open motions, to enter judgment in accordance with this Order, and to close this case.

SO ORDERED.

Dated: September 8, 2021
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive, flowing style. The first name "Vernon" is written in a larger, more prominent script than the last name "Broderick". The signature is positioned above a horizontal line.

Vernon S. Broderick
United States District Judge